

**ZONING BOARD OF APPEALS
Ipswich, Massachusetts**

**Meeting Minutes
January 23, 2020**

Pursuant to a written notice posted by the Town Clerk and published in the Ipswich Chronicle, a newspaper of general circulation, the Ipswich Zoning Board of Appeals held meeting on Thursday January 23, 2020 at 7:30 p.m. in Room A, Town Hall, 25 Green Street, Ipswich, MA. Members attending were Chair Robert Gambale, Benjamin Fierro, Lewis Vlahos, Robert Clocker, Associate Members Justin Planasch and Robert Tragert.

Also, Administrative Assistant Marie Rodgers. Becky Gayton was absent with prior notice.

Jon Whitten Attorney for the Board was present for the Essex Rd 40B. This meeting was recorded by ICAM.

Citizen Queries: There were none.

Announcements:

Chair announced the continuation of the following hearings:

25 Pleasant Street, Elder Friendly Housing, LLC. Karl Mayer Chair announced the continuation of the public hearing, at the applicant's request, to the February 13, 2020 meeting.

Documents and exhibits used by the Appeals Board: request to continue to the 2.13.2020 meeting dated 1.22.2020

40 Pineswamp Road - Peter Pappalimberis requests an **Appeal** Chair announced the continuation of the public hearing, at the applicant's request, to the February 13, 2020 meeting.

Documents and exhibits used by the Appeals Board: request to continue dated 1.16.2020 signed by Peter Pappas.

30 and 34 Town Farm Road and 17 Locust Road, Kieran McAllen requests Comprehensive Permit approval, pursuant to MGL Ch. 40B, to construct 40 age-restricted for-sale dwelling units (20 duplexes), of which 25% would be subsidized for low to moderate income use (Assessor's Map 30B, Lots 63, 37A and 33) (continued from the May 2017 all of 2018 through November 2019 meetings)

26 Essex Road (Assessor's Map 54A, Lot 14A) **36 Essex Road** (Map 54C, Lot 22); **38 Essex Road** (Map 54C, Lot 22A) **42 Essex Road**, (Map 54C, Lot 23) and **44 Essex Road** (Map 54C, Lot 24) **Essex Pastures, LLC** requests Comprehensive Permit approval, pursuant to MGL Ch. 40B, to construct one hundred ninety-four (194) residential rental units, of which forty-nine (49) units would be affordable to households earning no more than eighty-percent (80%) of the area median income. (continued from the June, 2018 through November 2019 meetings)

Attorney Jon Whitten was present representing the Board.

Chairman Gambale read the legal ad and re-opened the public hearing at 7:41 p.m. The applicant John Bruni was present represented by Attorney Smolak. He noted that a written request was submitted to continue to the March 19, 2020 meeting and an Extension of Time to March 31, 2020

Attorney Smolak spoke to the last meeting held in October 2019, and a revised concept plan was presented on the entire 13.5 acre parcel. The applicant has changed to Hancock Engineering firm and is in the process of updating the proposal, in response to issues raised and plans to submit a full set of plans by February 20th, 2020.

He offered peer review TEC review civil engineering and traffic and allow to communicate with his team for expedient action. And one additional workshop with Board member Rob Clocker and Davis Square Architects.

Discussion took place concerning extending the extension of the 180-day period and funds for peer review. Attorney Whitten cautioned the Board and suggested an extension of time out to June. Attorney Smolaks agreed to provide an extension.

Chair Gambale initiated discussion concerning funds for peer review and requested an additional \$7,000. Attorney Smolak agreed. Attorney Whitten questioned Attorney Smolak about the project eligibility letter and addition of land. Attorney Smolak indicated that MHP has been kept in the process and is aware of it and understands by adding some commercial it makes a better project. Attorney Whitten asked if there was a request for a written approval. Attorney Smolak wants to advance the project further.

Chair Gambale would like map parcel and frontage. Attorney Smolak indicated that all parcels are included in the original application.

Keri MacRae Heartbreak Road said the project eligibility letter (PEL) was issued three years ago and suggested MHP provide more substantial letter noting the change in land evaluation, change in Performa, changes in finances.

Ms. MacRae suggested the applicant provide handouts, overhead projection for citizens to see.

She suggested updated 21E's are necessary because laws have changed; test holes needed no adding more property; updated storm water plan; the original traffic study was not accurate and did not include Lakemans Lane and Heartbreak Road; impervious surface calculations to be included in detailed plans; review of buffer to the RRA zone in back; conclude study on decibels levels and sound produced by all the Hvac. She requested all plans be submitted to Board and town departments. She noted that the Powder House Village 40B had a third party look at storm water and suggested the same for this project.

Mr. Clocker read a letter from Chris Florio, 44 Fellows Rd into the record (hereby incorporated by reference)

Chair anticipates that all issues will be addressed.

Attorney Smolak note that an updated request for waivers will be submitted as well.

Chair continued the public hearing to March 19, 2020 meeting at 7:30 p.m. in the COA dining room.

Documents and exhibits used by the Appeals Board: email from John Smolak dated December 31, 2019 10:47 AM confirming request to continue to the January 23, 2020 meeting.

Continued Public Hearings:

120 County Road, ROLE Realty Trust, Roger LeBlanc, Trustee requests a special permit pursuant to II.B.1.a to alter the current non-conforming 'Hotel/Motel' use, to allow cooking facilities in rooms with non-transient occupancy (multifamily development), or alternately, request a variance under XI.K to change the current non-conforming use to alter the efficiency dwelling units, to primarily single room occupancy units, with a density of one per 1,375 square feet of land in the Highway Business District. (Assessor's Map 54A, Lot 9) (continued from the July, August, September, October and November meetings)

Chairman Gambale read the legal ad and re-opened the public hearing at 8:10 p.m.

The Petitioner was present, with his Attorney Lisa Mead. Discussion took place regarding Town Counsel response. Attorney Mead reviewed the argument whereby the facilities at the Whittier Motel already meet the definition of "residential mixed use" and are nonconforming only in the sense that the collection of uses predated the special permit requirement.

Discussion ensued concerning town counsel's updated memo after all the history and information was vetted. The applicant agreed to all previously discussed conditions, including providing affordability at 60% of AMI and record the deed in perpetuity. Lottery process with DHCD was discussed. The Petitioner noted that he worked with the town's affordable Housing Partnership who fully supported the proposal.

Discussion was held concerning the conditions: affordable Housing Restriction ten out of 37 units at 60% of AMI; such that they qualify for the SHI; All Utilities shall be included in rent along with heat, AC, electric, cable/Wi-Fi, laundry and water and sewer; no exterior modifications to the rear with lights and decks; separate storage provided in the basement, no toys, bikes or grills shall be outdoors; lease agreement for a \$50 reduction in rent, for tenant with a child to attend nearby YMCA or similar; units shall remain rentals and not for sale as condominiums in perpetuity.

Discussion continued concerning the process of occupancy with lottery conducted by DHCD. The Petitioner confirmed there is parking for each renter; 20% of renters don't have cars. He acknowledged compliance with fire department for unit numbers on door and trim.

There were no questions from abutters or concerned citizens.

Mr. Fierro reviewed the request for a special permit to alter a nonconforming structure and modify nonconforming use. In order to grant a special permit the Board must find that the relief the applicant seeks is not substantially more detrimental than the existing use, not substantially more detrimental than nonconforming structure.

Structure is nonconforming is use is nonconforming; Town Counsel submitted a memo in agreement.

Board finds that is a legally preexisting nonconforming structure; rear setback at 17-feet is nonconforming and the left side setback is nonconforming

MOTION

Mr. Fierro moved the Board find the structure is preexisting legally nonconforming due to an inadequate rear and side setback. Mr. Vlahos seconded. The motion passed unanimously in favor.

Mr. Clocker read the memo from Town Counsel dated 1.23.2020 (hereby incorporated by reference)

Motion

Mr. Fierro moved the Board find the collective uses of motel, office and residential make it legally preexisting nonconforming use because the definition change to Residential Mixed Use prior to 2016 bylaw change. Mr. Vlahos seconded. The motion passed unanimously in favor.

Motion

Mr. Fierro moved the Board find alterations to the structure would not be substantially more detrimental to the neighborhood and would be beneficial to the community. Mr. Vlahos seconded. The motion passed unanimously in favor.

Motion

Mr. Fierro moved the Board find proposed alterations from components of residential mixed use from office, motel and residential to office and residential are not substantially more detrimental to the neighborhood. Mr. Vlahos seconded. The motion passed unanimously in favor.

Motion

Mr. Fierro reviewed the criteria under IX.J and moved the Board find the applicant has met the criteria under IX.J. Mr. Vlahos seconded. The motion passed unanimously in favor.

Motion

Mr. Fierro moved the Board grant the special permit as requested by the Petitioner pursuant to the Ipswich Protective Zoning Bylaw section II.B 1 & 2 XI.J to alter the combination of uses under "Residential Mixed Use" from a office/motel to office/residential; subject to the following conditions as immortalized by Attorney Mead and agreed to by the Board in accordance with plan titled Proposed Site Plan dated 9.30.2019. Mr. Vlahos seconded. The motion passed unanimously in favor.

Documents and exhibits used by the Appeals Board: Memo from George Hall Town Counsel, Anderson & Kreiger dated 11.20.2019; 4pg from applicant's attorney Lisa Mead dated 12.16.2020; 2pg. memo from George Hall Town Counsel, Anderson & Kreiger dated 1.17.2020; memo from George Hall Town Counsel, Anderson & Kreiger dated 1.23,2020

New Public Hearings:

3 Bay View Road -Chairman Gambale read the legal ad and opened the public hearing at 10:40 p.m. Kathy & Thomas Stringer requests a variance pursuant to IX.K and VI Table of Dimensional and Density F.21 to construct a second story addition (700 square feet) at 3 Bay View Road (Assessor's Map 24A, Lot 111)

The Petitioners were present represented by William Nolan of Savoie Nolan Architects LLC and Associate Abbie Zuker. Mr. Nolan provided letters of support to the Chair. He reviewed the location and topography of the property adjacent to Pavilion Beach built 1945; first floor comprised of a walk out basement measuring 1,400 square feet, the total house measure 2,450 square feet.

Mr. Nolan outlined four main goals to update the living spaces. He reviewed the restrictions of lot size and elevations; the footprint of the dwelling cannot be expanded. He spoke to the flood zone maps changes made by FEMA; prior to 2014 the basement was considered habitable living area under FEMA regulations. Recent revisions to those regulations place the basement within FEMA's flood zone by raising the elevation 10' to 13'; the basement is 9.5; this limits the homeowner's ability to make improvements. They are seeking to bring the property into full compliance by rendering the basement uninhabitable and replacing that area with a 700 square foot second story. It will not exceed the maximum building height. A substantial renovation will require installation of flood gates in the 1,050 square foot basement; mechanical equipment will be required to relocate.

The addition of a 700 square feet would increase the lot coverage from 30% to 34%; an increase of 4%; 244 square feet more than allowed. Height limits were in compliance.

Mr. Nolan reviewed the Variance criteria citing the elevation of the land prevents useable space. He claimed that most of Great Neck can use their basements and are out of the flood zone. Betterment of a one and one half story cape is in keep with the area; relative density will remain the same, 4% increase with minimal impact and keeping with the intent of the bylaws.

Discussion took place concerning the use of the basement as living space, substantial improvements (50% of assessed value of the home), trigger FEMA regulations to install flood gates in the basement and waterproof interior.

Chair read letters of support into the record:

Julie Bellet, 4 Alamo questioned the intent of the bylaw and wanted clarification for the addition 50% over the bylaw. The Board explained the allowable 30% lot coverage would be increased by 4%.

Chris Fabbri, 1 Hillside Road spoke in support and expressed his appreciation for homeowner's upkeep of the property.

After a lengthy discussion concerning topography in the district of the subject property, the Board found that the proposal met the variance criteria as reviewed by Mr. Fierro.

MOTION:

Mr. Fierro moved the Board find that the applicant has met the criteria relative to soil, shape and topography to utilize elevation 9.5 feet is within FEMA flood zone on this property and a literal enforcement would cause hardship. Mr. Vlahos seconded, the motion passed unanimously.

MOTION:

Ms. Fierro moved the Board grant the Petitioner's request for a Variance in accordance with the Ipswich Protective Bylaws section VI Table of Dimensional and Density F.3 located in the RRB zoning district for relief

from maximum floor area of 30% to 34% an increase of 244 square feet for the purpose of renovations adding a second story addition in accordance with plans titled Stringer Residence, 3 Bay View Road Ipswich, MA December 12, 2019 by Savoie Nolan Architects LLC. Mr. Vlahos seconded, the motion passed unanimously.

Documents and exhibits used by the Appeals Board: Petition application with required submittals; letters of support from 4,5,9,16 BayView Rd; 7 Hillside Rd; 132 Little Neck Rd.

43 Plover Hill Road, Paula and Charles Reggio requests a Special Permit pursuant to, but not limited to sections XI.J – V. D Table of Use Regulations for a **Private Guest House** in the same footprint as the existing pool house. (Assessor's Map 23B, Lot 002A)

Chairman Gambale read the legal ad and opened the public hearing at 10:40 p.m.

The Petitioners were present and explained their request to use the existing pool house as a private guest house. The current pool house measures approximately 900 square feet. Ms. Reggio acknowledged that as a private guest house, it may not be let for compensation and that no kitchen cabinets may be installed. Ms. Reggio submitted photos of the interior of the pool house and described the layout. The septic system has two tanks and one leach field.

Chair Gambale read an email from John Balch, President/Treasurer/Manager Proprietors of Great Neck Inc. (hereby incorporated by reference) and spoke to his recollections of the pool house exceeding 3.6 feet in height and the Building Inspector required it to be lowered. He suggested the Petitioners look into Mr. Balch complaint of vegetative clearing that took place along the lot line.

Discussion was held concerning limitations, parking is adequate with four spaces in the driveway. Ms. Reggio submitted photos of the interior and described the layout, no alterations are proposed, except for painting.

The Board found that the proposal met the special permit criteria in a review by Mr. Fierro.

As there were no comments from abutters or others,

MOTION:

Mr. Fierro moved the Board find the proposal meets the criteria set forth in XI.J 2 a & b subsections 1-6. Mr. Vlahos seconded. The motion passed unanimously

MOTION:

Ms. Fierro moved the Board grant the Petitioner's request for a special permit to use the existing pool house as a private guest house, as set forth in the table of uses in accordance with plans titled Professional Land Services, L.C. revision date 12/11/2003. Mr. Vlahos seconded. The motion passed unanimously.

Documents and exhibits used by the Appeals Board: Petition application with required submittals. Photos of pool house interior. Email dated 1.23.2020 from John Balch, President/Treasurer/Manager Proprietors of Great Neck Inc.

Approval of Minutes:

Mr. Fierro moved to approve and accept meeting minutes of 11.21.2019 with minor edits. Mr. Clocker seconded, the motion passed unanimously. (*meeting minutes hereby incorporated by reference*)

Adjourn - It was moved, seconded and unanimously voted to adjourn at 10:56 p.m.

Respectfully submitted,

Marie Rodgers
Administrative Assistant

These minutes were approved by the Board on February 13, 2019

Pursuant to the 'Open Meeting Law' the approval of these minutes by the Board constitutes a certification of the date, time and place of the meeting; the members present or absent; the findings made and actions taken. Any other description of statements made by any person, or the summary of the discussion on any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Board as to the completeness or accuracy of such statements.